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# Transcript

Newsletter of the Orange County Public Law Library

November 2005  
Volume 10 Issue 4

## Farewell to Laura McCartney

*by Maryruth Storer, Director*

The Library staff said farewell to Laura E. McCartney, Administrative Assistant, at a retirement dinner at the end of her last day of work, September 1, 2005. Laura's first working day as Secretary at the Law Library had been October 15, 1973, so she participated in our services for nearly thirty-two years.

Many changes occurred during those years as Library staff moved from using typewriters to Display-write4 word processing to individual personal computers to networked computers. As time went on, Laura's shorthand skills were rarely used, but her ability to keep up with software changes helped modernize our administrative operations.

For many years, Laura served as the Law Library's United Way Campaign Coordinator, and her efforts often helped the Law Library achieve an award of recognition for the level of staff participation.


The Law Library Board of Trustees recognized Laura's retirement at their August 31 meeting, presenting her with a pair of bookends as a token of the Trustees' appreciation and esteem for her.

Laura's life in retirement began with a vacation to Canada to visit family, and she plans to spend more time as a real estate agent in Irvine. 

## ON DISPLAY NATIVE AMERICAN HERITAGE

*by Mora Prestinary, Reference Librarian*

In celebration of National American Indian Heritage Month, in November, the Library will be exhibiting materials on Indian history and law. Noted lawmakers of Indian heritage will also be displayed along with a poster of famous Native Americans.


A web site worthy of watching, Raising the Bar, sponsored by the ABA, also features prominent lawyers <http://www.abanet.org/publiced/raisingthebar.html>. Please take a moment to pause and look at this display while you are in the Library. 

## Inside This Issue

Ask a Librarian	2
From the Circulation Desk	2
What's New from the Depository	2
The Conscience of the King	3
Looking at the Web	4
The Rights of the Convicted	5
New ABA Publications	7

## From The Circulation Desk



Just a friendly reminder, the deadline for paying your Annual Dues is January 31, 2006. Thanks to all of the patrons who support our library. 



### Ask a Librarian


Question of the Quarter  
*by Mora Prestinary, Reference Librarian*

**Q:** How do I obtain a copy of my divorce record?

**A:** In Orange County, contact the Lamoreaux Justice Center, 341 The City Drive, Orange, CA 92868-3209. Open: Monday - Friday, 8:00 a.m. to 5:00 p.m.

Telephone: Records Department (714) 935-7906.  
Or their web page for instructions: <http://www.occourts.org/geninfo/flpfff.asp#copies>

In Los Angeles contact the Los Angeles County Superior Court, Court Document Order System.  
<https://www.lasuperiorcourt.org/ldos/index.aspx>.

If you don't know where the divorce took place, try a public records agency <http://www.brbpub.com/pubrecsites.asp>. 

## What's New From The Depository

*by Victoria Garrott-Collins*  
Government Documents Assistant



*The Energy Policy Act of 2005*

SUDOC Y 4.C 73/8:109-1

*Calling 311: Guidelines for Policymakers*

SUDOC J 28.40:C 13

*Combating Spyware: H.R. 29, The Spy Act*

SUDOC Y 4.C 73/8:109-10

*How Internet Protocol-enabled Services are Changing the Face of Communications*

SUDOC Y 4.C 73/8:109-4

*The Implementation of GEOSS: a Review of the All-Hazards Warning System and its Benefits to Public Health, Energy, and the Environment*

SUDOC Y 4.C73/8:109-2

*Juveniles in Corrections*

SUDOC J 32.10/4: J98

*Managing Calls to the Police with 911/311 Systems*

SUDOC J 28.38:C 13

*National Estimates of Missing Children: Selected Trends, 1988-1999*

SUDOC J 32.2:N 21/SELECT

*National Response Plan*

SUDOC HS 1.2:R 31


*Preparing Consumers for the End of the Digital Television Transition*

SUDOC Y 4.C 73/8:109-5

*Report to the President of the United States: Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction*

SUDOC PREX 1.19:IN 8/W 37

*Welcome to the United States: a Guide for New Immigrants*

CDROM HS 1.8:IM 6/ENG./SPAN./CD 

# *The Conscience of the King & the Rule of Law*

*by John Patrick Quigley*

**R**ecent debate over nominations to the United States Supreme Court reflects different judicial philosophies. On the one hand, we have the rule of law, which provides known standards by which men may plan their actions. On the other hand, we have a more flexible view which emphasizes results. We propose that these are both time-honored traditions, whose inherent conflict goes back to the very beginning of law. Our discussion is general and somewhat conjectural, but we have included notes to other materials for those who wish to delve deeper into matters over which we lightly pass. (1)

## **THE CONSCIENCE OF THE KING**

Deciding disputes is an important function of government. Early English Kings presumably traveled around the country with a bench, listening to lengthy arguments. In time, the King appointed others to occupy the Kings Bench, and they endeavored to provide a law common to all sections of the country by precedent-setting rulings. (2)

Aggrieved citizens soon found that the Common Law's rules sometimes precluded the relief that they were seeking and appealed to the King's grace for relief. He passed this chore on to his Chancellor, who was also the Royal Chaplain and considered to be the "King's conscience". Over the years, the Chancellor's Equity Court came to give relief that the Law Courts wouldn't give. (3)

During the ensuing competition, both Law and Equity tended to give ad hoc remedies, expressed by Justice Holmes as: "The life of the law has not been logic: it has been experience." Holmes's view certainly doesn't reflect deductive logic, but it does suggest an inductive process. The courts were, first and foremost, solvers of specific disputes. From their solutions, more general principles were developed. (4)

An obvious problem with law derived from cases is some uncertainty about what the law will be, which probably provided employment opportunities for lawyers. After wars, revolutions, and beheadings of a Chancellor and a King, all sovereign powers, including all courts, were brought under the

nominal control of an elected Parliament. Throughout this turmoil, the Common Law served the English remarkably well within the confines of their island, and didn't keep them from taking the lead in developing democratic institutions. (5)

## **THE RULE OF LAW**

The Romans needed a more comprehensive system for providing uniform justice throughout their far-flung empire, and their greatest achievement may have been developing codified law, starting with their "Twelve Tables". This involved a more deductive reasoning process: general principles were written in codes, and cases were decided by reasoning from those principles. But they also had an alternative system similar to English equity. It has been proposed that both Roman Law and Equity became too cumbersome. They were ultimately replaced with a codified Civil Law ordered by the Emperor Justinian, which served as a model for later nations on the continent. (6)

## **PUTTING IT IN WRITING**

Roman codification efforts were helped by the fact that most Romans, unlike the early English, could read and write. That's not to say that English common law was entirely oral. Of especial importance was the Magna Charta, whereby English barons forced their King John to recognize certain individual rights. American colonists, seeking common ground on which to join as a nation, amended their constitution with a Bill of Rights, reflecting some of the values of the Magna Charta. (7)

There are two revolutionary ideas here. One is that the sovereign (government) is limited as to its actions affecting the individual. The other is that this limitation is put into writing. Most Americans probably think that the core of our democracy is a written constitution which they can read. But many legal scholars, perhaps hoping to retain equitable traditions, define "constitution" differently. (8)

American revolutionaries further parted company with English and many other political systems by dividing the sovereign power and creating checks

*(Continued on page 4)*

# LOOKING AT THE WEB

by Mora Prestinary, Reference Librarian



HANDBOOK OF FEDERAL INDIAN LAW

<http://thorpe.ou.edu/cohen.html>

USC TITLE 25 : INDIANS

<http://www.access.gpo.gov/uscode/title25/title25.html>

NATIVE AMERICAN RIGHTS FUND

<http://www.narf.org/cases/iim.html>

INDIAN TRUST WEB PAGE

<http://www.doi.gov/indiantrust/>

NATIONAL INDIAN LAW LIBRARY

<http://www.narf.org/nill/aboutp/aboutnill.htm>

PUBLIC RECORD SEARCHING

<http://www.brbpub.com/>

<http://www.searchsystems.net/>

<http://www.americanlegalnet.com/mainframe.asp?user=&dest=products.asp>

<http://www.publicdata.com/>

<http://www.archives.gov/>

<http://www.sexualoffenders.com/>

[http://www.netronline.com/public\\_records.htm](http://www.netronline.com/public_records.htm) 



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<http://innopac.ocpll.org/>

Conscience of the King  
*Continued from page 3)*

and balances between the different branches of government. This will be the topic of a future article.

(1) The overall theme of this article is explored in *Ancient Law*, GEN4 K190.M35, a classic written by Henry Sumner Maine in 1861 and most recently published with commentary in 2002. "The theoretical descent of Roman Jurisprudence from a code, the theoretical ascription of English law to immemorial unwritten tradition, were the chief reasons why the development of their system differed from the development of ours." (p.1)

(2) The extent to which early English law included statutes is discussed in *Law and Legislation from Aethelberht to Magna Carta*, GEN5 KD20.R5 (1966).


(3) An interesting discussion on the relationship between Law and Equity, especially quotes from Alexander Hamilton, is in *Equity and the Constitution*, GEN3 KF399.M32 (1982).

(4) The famous quotation from Justice Holmes is in the first paragraph of his prestigious treatise: *The Common Law*, GEN3 KF394.H65 (1881). We have nearly a dozen books on the enigmatic Holmes and his writings at GEN3 KF9745.H6.

(5) For discussion of geography as a factor in the success of English democracy, see "DIRECT DEMOCRACY: BALLOT PROPOSITIONS", in the August 2004 *Transcript*.

(6) For references on Roman codification and its effect on continental European law, see "EUROPEAN LAW: PAST, PRESENT & FUTURE", in the February 2005 *Transcript*.

(7) For examples, see *Magna Charta: the rise and progress of constitutional civil liberty in England and America – embracing the period from the Norman conquest to the centennial year of American independence*, GEN5 KD4080.W45 2002 (first published in 1880).

(8) "England has no written constitution, but its form of government under an amalgam of customs and ancient statutes, which are its 'unwritten' constitution, is no less definite and certain than our own." *Historical Introduction to Anglo-American Law in a Nutshell* (pp. 16-17), GEN5 KD532.Z9K44 1990. 

# THE RIGHTS OF THE CONVICTED: A LOOK AT FEDERAL SENTENCING LAW

by Maria R. Arredondo, Library Assistant



When speaking of criminal procedure, one often thinks of the rights individuals have when they are arrested and tried for suspected crimes. Sentencing is usually not afforded the same attention—perhaps because it is easy to forget that those already convicted, often of very heinous crimes, are afforded rights. The Supreme Court, however, has recently shifted national attention to that very topic—the constitutional rights of those who have been tried and convicted.

In 2002, it began that focus in a dramatic fashion by ruling that it is unconstitutional to sentence persons who are mentally retarded to the death penalty. See *Atkins v. Virginia*, 536 U.S. 304 (2002). In the same session, it found it unconstitutional for persons to be sentenced to the death penalty by a judge, rather than by a jury of peers. See *Ring v. Arizona*, 536 U.S. 584 (2002). Last session, it rendered another two quite significant opinions. The first in January rendered it unconstitutional for Congress to make the Federal Sentencing Guidelines “mandatory.” The second in March rendered it unconstitutional to sentence minors to the death penalty. See *Roper v. Simmons*, 03-633 (2005). The focus of this article is not the death penalty decisions; rather, it is on the Federal Sentencing Guidelines and specifically *U.S. v. Booker*, 04-104 (2005).

An obvious purpose of sentencing is punishment—you commit a crime, you do the time. Laws that specify which acts amount to criminal behavior are embodiments of our morals and norms as a society; therefore, when they are violated we seek punishment. Additionally, there are deterrence and rehabilitation. We advocate long prison terms and we chastise politicians who are “soft on crime” because there is a belief that tough sentencing laws will prevent future crimes. The individual will refrain from breaking laws because of the sentences that he/she will endure. Additionally, sentencing not only includes prison time; we also impose various types of counseling programs, drug detoxification, and community service—all aiming to rehabilitate the criminal offender. Even when prison time is involved, we hope the prisoner will exit as rehabilitated person—a person who will not become a repeat offender. See

Gerhard O.W. Mueller, *Sentencing: Process and Purpose*, GEN3 KF9685.M33 (1977), who gives an interesting discussion on the purpose of sentencing and argues that rehabilitation and deterrence are mere opinions, and that law only seeks to punish.

As is all law, sentencing law is bounded by the Constitution. It is intuitive to think of the 8<sup>th</sup> Amendment, which states that it is unconstitutional to impose “cruel and unusual” punishment. Less obvious, though, is the 6<sup>th</sup> Amendment, which the Supreme Court relied on in *U.S. v. Booker*. The 6<sup>th</sup> Amendment of the Constitution states that a jury of peers shall convict a person. So how exactly do the Federal Sentencing Guidelines interfere with this proviso? Well, the answer is quite complicated as evidenced by the lengthy Supreme Court opinion, but following is a brief overview of the rationale.

In *U.S. v. Booker*, the defendant had been convicted of possessing crack with the intent to distribute. 21 U.S.C. § 841(a)(1) provides for a mandatory minimum sentence of 10 years in prison and a maximum of a life term for that specific crime. As with many federal criminal statutes, the minimum to maximum range of a sentence affords judges wide latitude. The creation of the Sentencing Guidelines helped narrow the range, thus providing for some uniformity and diminished judicial discretion. The Guidelines *required* judges to impose sentences toward the minimum or maximum depending on certain factual findings. These “sentence-enhancing” facts that need *not* have been found by the jury to be true beyond a reasonable doubt. Thus, depending on the findings the judge was required to make during the sentencing hearing, the sentence range would be greatly reduced if not eliminated.

In *Booker* specifically, §§ 2D1D.1(c)(4) and 4A1.1 of the Guidelines allowed the judge to take into account the defendant’s priors and the quantity of drugs involved in the commission of the crime. The issue became the quantity of drugs involved. The question arose: Is it constitutional for the sentence to be based on subsequent evidence introduced at the sentencing hearing that the *judge* found by a *pre*


(Continued on page 6)

*ponderance of the evidence?* Shouldn't it be based on what the jury found to be true *beyond a reasonable doubt?* The difference was considerably significant: 92.5 grams versus 566 grams of crack; 17.5 years versus 30 years as a minimum term; 22 years versus life as a maximum term. The defendant in the case was tried and convicted by a jury of his peers for possessing with the intent to distribute 92.5 grams of crack but the judge sentenced him for 566 grams.

The Supreme Court ultimately held that the preservation of the substance of the 6<sup>th</sup> Amendment was compromised by the fact that a judge was making sentence-enhancing determinations at a lower standard of proof. To remedy the problem, it ruled that the Guidelines should only be *advisory* and a mere tool for judges to use. It reasoned that eliminating them completely would practically circumvent Congressional intent, as would requiring that a jury make all of the sentence-enhancing determinations. It decided that excising the words that rendered the Guidelines mandatory would be best in line with Congressional intent.

Since that decision, the circuit courts have been amiss as to how to respond to appeals made by defendants who are seeking to reduce sentences that were imposed prior to *Booker*. On June 20, the court denied certiorari in *Rodriguez v. U.S.*, 04-1148 (2005). At issue was whether an appeals court should presumptively render the sentences wrong or whether the defendant must first show through substantial evidence that the court would have handed down a lighter sentence had it not been for the mandatory Sentencing Guidelines. The cert denial leaves the question up in the air.

[The sentencing guidelines are officially titled the United States Sentencing Commission Guidelines Manual, which can be found at <http://www.ussc.gov>. For print material look through the general area of GEN3 KF 9685.]

A discussion of the California statutory sentencing scheme will be made in a forthcoming article. 

## Making the Most of Your Library Visit: Legal Research Guides

- ◆ California Legislative History Research at OCPLL
- ◆ Copyright, Patent & Trademark Law Sources
- ◆ Expert Witness Sources
- ◆ Federal Legislative History Research at OCPLL
- ◆ How To Do a Limited Patent or Trademark Search at OCPLL
- ◆ How to Read a Library of Congress Call Number
- ◆ OCPLL Subject Headings & Call Numbers
- ◆ Resources Containing Forms – A Selective List
- ◆ Sources for Jury Instructions
- ◆ Statutes and Codes

### Internet Sources

- ◆ Business Research
- ◆ California Law Research
- ◆ Electronic Journals
- ◆ Expert Witness Sources
- ◆ Federal Law Research
- ◆ Local Research
- ◆ Miscellaneous Research Links



# New ABA Publications

by Steven J. Nadolny, Catalog Technician



To “steal”—alright “borrow”—and modify a popular catch phrase: “The ABA is your friend”—at least if you’re a lawyer or supporter of the current legal establishment. I think one can safely say that at least part of the American Bar Association’s mission is to promote, protect and defend the American legal profession. – And lawyers are sort of like dentists: we’re glad we have them, but we really don’t want to have to use them. [I admit openly in public that some of my best friends are lawyers, but then my brother’s a dentist! But I digress... .]

OK, so the ABA says that their mission “is to be the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law.” And their website proclaims: “Welcome to the American Bar Association, the largest voluntary professional association in the world. With more than 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.” Well, guess what: occasionally you can trust a group of lawyers! Here are just a few of the ABA’s publications that have recently come across my desk. From the Law Practice Management Section:

*The Successful Lawyer: Powerful Strategies for Transforming Your Practice* by Gerald A. Ruskin, GEN3 KF300 .R57 2005. Its short chapters make for easy reading. Ruskin covers such topics as planning your practice or re-planning your future, client relations, active listening, getting referrals, managing your time, delegation, billing, building skills, handling complaints, dealing with difficult people, etc. and money. Concise, practical and time-tested.

*The Lawyer’s Guide to Creating a Business Plan: a Step-by-Step Software Package* by Linda Pinson, CDROM KF315.Z9 P56 2005 . It has been said that if you fail to plan, you plan to fail—and lawyers are no exception. This is a Windows-based software package that helps you develop your own blueprint for success. It assumes no prior knowledge of creating a

plan and helps with your financial plan including spreadsheets, etc. It’s based on the author’s award-winning software *Automating Your Business Plan* and is designed specifically for lawyers and law firms. It includes a bonus PDF of *Anatomy of a Business Plan*. Use it to chart your way to success and/or encourage potential partners or investors. So make a plan, work the plan – or re-work the plan as needed.

And because we live in a media environment: *The Lawyer’s Guide to Creating Persuasive Computer Presentations* by Ann E. Brenden and John D. Goodhue GEN3 KF320.A9 B73 2005. Designed to help you create eye-catching computer presentations that are heard, understood and remembered by your clients and juries in all phase of a trial, it also offers advice on using computer presentations outside the courtroom, during meetings, pretrial and seminars. Learn and use basic skills to advanced techniques using Microsoft® and PowerPoint®.

And because much of modern life is marketing, from the General Practice, Solo & Small Firm Section comes: *How to Capture and Keep Clients: Marketing Strategies for Lawyers*, Jennifer J. Rose, editor, GEN3 KF316.5 .H69 2005. Because capturing and keeping [paying] clients is job one and debatably you and your firms’ most important asset -- outside your own talents, this book offers advice on asking for business, networking, partnering, marketing in small towns or in ethnic communities, avoiding ethical mistakes, creating a service oriented firm, etc. Can be easily absorbed in bite-sized chunks. -- Where would you be without your clients?

Check out these and other ABA publications like *Flying Solo: a Survival Guide for the Solo and Small Firm Lawyer*, GEN3 KF300.Z9 .F59 2005, etc. at OCPL today!📖

# TECHNOLOGY AT ORANGE COUNTY PUBLIC LAW LIBRARY

## PUBLIC COMPUTER STATIONS

### LEGAL RESEARCH PROGRAMS

Witkin titles  
Authority-Matthew Bender titles  
Shepard's  
Premise- Rutter Group

### INTERNET ACCESS & DATABASES

LegalTrac- Legal Periodical  
Citations  
HeinOnLine- Federal Register,  
U.S. Reports,  
Law Reviews, Treaties  
CEB Practice Libraries  
  
LLMCDigital- Federal Documents  
Westlaw- All States & Federal, Keycite  
Shepards

### CD-ROM VIEWING STATION

### WORD PROCESSOR

## OCPLL will be closed for the following Court Holidays



November 11, Veterans Day  
November 24 & 25, Thanksgiving Holiday  
December 26, Christmas Day (observed)  
January 2, New Years Day (observed)  
January 16, Martin Luther King Jr. Day  
February 13, Abraham Lincoln's Birthday (observed)  
February 20, Presidents' Day



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### Special Holiday Hours

December 24 & 31      9:00 a.m. - 2:00 p.m.

#### Regular Library Hours

Monday-Thursday	8 am-8 pm
Friday	8 am-6 pm
Saturday	9 am-6 pm

*Closed Sundays and Court Holidays*

#### The Orange County Public Law Library

derives its income from a portion of the filing fees in civil cases heard in the Superior Courts of Orange County, rather than from general tax funds.

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